



Paper No. 12

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OFFICE OF PETITIONS

In re Application of
Mathilde Benveniste
Application No. 10/032,507
Filed: January 2, 2002
Attorney Docket No. 2000-0611 CIP
For: **RANDOM MEDIUM ACCESS METHODS WITH
BACKOFF ADAPTATION TO TRAFFIC**

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: **DECISION REFUSING STATUS**
: **UNDER 37 CFR 1.47(b)**
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This is a decision on the renewed petition under 37 CFR 1.47(b), filed October 28, 2002.

The renewed petition under 37 CFR 1.47(b) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)".

The above-identified application was filed on January 2, 2002, without an executed oath or declaration. Accordingly, a "Notice to File Missing Parts Nonprovisional Application" (the "Notice") was mailed on January 25, 2002, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration. A first petition was filed on April 22, 2002, with a request for an extension of time within the first month pursuant to 37 CFR 1.136(a). The petition of April 22, 2002, was dismissed by a decision mailed August 7, 2002. The instant renewed petition was then filed on October 28, 2002, with a request for an extension of time within the first month.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee,
- (4) a statement of the last known address of the non-signing inventor,
- (5) proof of proprietary interest, and

- (6) a showing (statement) that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

The instant petition lacks item (2) as set forth above.

As to item (2), petitioner failed to file a proper oath or declaration with the instant renewed petition as required by 37 CFR 1.47. While petitioner established that Mr. Samuel H. Dworetsky and Ms. Christine Szwerz are authorized to act on behalf of the 37 CFR 1.47(b) applicant, the declaration was not executed by either party; it was left unsigned. The declaration must be executed by an authorized party. Petitioner is again advised to consult *Manual of Patent Examining Procedure* ("MPEP") Section 409.03(b) for further guidance on fulfilling this requirement.

It is noted that petitioner again provided a second hand account of the circumstances surrounding the presentation of the application papers to the non-signing inventor and her refusal. Pursuant to section 409.03(d) of the MPEP, petitioner is cautioned that future petitions of this kind should provide a statement from the person who presented the application papers to the inventor and to whom the refusal was made. In this instance, according to petitioner's account, the statement should be offered by Mr. Benjamin Lee. The statement offered in the renewed petition is made acceptable, however, because petitioner also sent the application to the inventor's last known address which were then returned unopened.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, Virginia

Telephone inquiries should be directed to the undersigned at (703) 305-0010.



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